

Assess Your Grammatical Acumen

BY SUSAN MCCLOSKEY

Grammar is the user's manual that comes with a language. It helps writers shape their thoughts into sentences that mean something to readers. You may not often consult this manual, for the very good reason that you don't need to. Even if you have forgotten what a past participle is or cannot distinguish a coordinate from a subordinate conjunction, you probably use these grammatical elements accurately more often than not.

So, whether you picked up grammar on the fly or learned it by diagramming sentences under Miss Grundy's watchful instruction, you may be thinking right now that the last thing you want to do is read this essay. Before you act on that thought, however, take the Grammar Quiz.

The errors represented in the quiz are those I encounter in almost every document I review for my clients, no matter what their practice area or level of experience. Think of them as the Lawyers' Top Ten. If you recognize what is awry in every sentence and can set things to rights, read no further. But if even one sentence looks just fine to you, or if you're curious about the grammatical errors that *other* legal writers repeatedly commit, read on. For the grammaphiles among you, I've provided a Bonus Question to test your recall of the parts of speech and their functions in sentences. Along the way, perhaps even grammaphobes will conclude that grammar fosters something more than the chilly virtue of correctness. It makes intelligible the interchange between writer and reader in which lawyers daily engage.

Here's the quiz. You can check your answers on page 33.

GRAMMAR QUIZ

Identify and correct the errors in the following sentences.

1. Ordinary socializing and flirtation fails to satisfy the severity test of a valid sexual-harassment claim.
2. What type of damages are available for recovery against a builder under these circumstances?
3. Once a moving party meets their burden, the burden shifts.

4. Formal title to the property would remain with the wife, which may be unpalatable to the husband.

5. Whether due process was honored; whether the parties' rights to be heard and represented were fully exercised; whether the court's discretionary ruling was reasoned or arbitrary: This can be determined only on a case-by-case basis.

6. Bradley's client said she understood the charges a few times during the conversation.

7. To prove actual malice, the defendant must have known the statements were false or published them with reckless disregard despite knowing they were false.

8. Neither the report of Dr. Farragut nor Dr. Rider contains the requisite information.

9. In the case of the Loan, (1) there is an express loan, (2) the terms of which are set forth in the Note, (3) which interest rate exceeds the permissible rate of 20%.

10. Like *Sheffield*, the adoptive parent contracted orally, but not in writing, to raise his wife's child as his own.

11. Bonus Question: For the words you do not recognize in the first stanza of Lewis Carroll's *Jabberwocky*, identify their parts of speech (*e.g.*, noun, verb, adjective) and their function (*e.g.*, subject, verb, direct object).

'Twas brillig, and the slithy toves
Did gyre and gimble in the wabe;
All mimsy were the borogoves,
And the mome raths outgrabe.¹



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The errors in sentences 1 through 10 fall into three categories: (1) problems of *agreement*, in which the writer has obscured the relationship between subject and verb, or pronoun and antecedent; (2) problems of *modification*, in which the writer has mishandled the modifiers that elaborate the sentence's core meaning; and (3) problems of *coordination*, in which the writer has mismatched structures that should match or tried to compare incomparable things. Sorting the problems in this way makes them easier to recognize; once you've recognized them, solving them is a snap.

Problems of Agreement: Subject and Verb (# 1–2)

Among the rules of grammar, those pertaining to agreement are fundamental. *Every* reader is confused every time a writer obscures the relationship between a sentence's functional elements – its subject and verb, or its pronouns and the nouns they replace. Even the grammar-checking program on your computer reacts to simple instances of these problems, sending out green squiggles to summon you to greater care.

The first rule of agreement requires that the subject and verb of a sentence agree in number. A singular subject takes a singular verb; a plural or compound subject, a plural verb.

In **Sentence 1** of the Grammar Quiz, *Ordinary socializing and flirtation fails to satisfy the severity test of a valid sexual-harassment claim*, the writer broke this rule by giving a compound subject (*ordinary socializing and flirtation*) a singular verb (*fails*). This error is especially puzzling, because the writer almost certainly would never write *Paul and Fred wishes to jettison their voluble silent partner*. Why did he slip into an error here? Perhaps *ordinary socializing and flirtation* struck him as a unitary concept, like the compound-looking but singular-meaning subject of this sentence: *Having your cake and eating it too is a delectable impossibility*. Offices across the land would be very different places, though, if there were no distinction between saying hello to a co-worker and blowing him or her a kiss. It is prudent and courteous to honor that difference and grammatically correct to write the plural verb *fail*.

In **Sentence 2**, the writer mistook the subject, letting the noun closest to the verb determine the verb's number: *What type of damages are available for recovery against a builder under these circumstances?* The problem is that the grammatical subject is not the plural *damages*, but the singular *type*. You can avoid this routine error by remembering that the object of a preposition cannot be the subject of the verb. This rule disqualifies *damages*, *recovery*, *builder*, and *circumstances*, all of which follow prepositions. By process of elimination, you're left with *type*, a choice that is semantically as well as grammati-

cally accurate. The correct pairing of singular subject and singular verb clarifies that the writer is interested in the categories of damages, not in the dollar amount of the plaintiff's possible award. In response to her question, she expects *actual damages* or perhaps *punitive damages*, not \$50,000. Agreement maximizes the likelihood that she'll get the response she is seeking.

Problems of Agreement: Nouns and Pronouns (# 3–5)

Like subjects and verbs, pronouns and the nouns they replace must agree in number. But the second rule of agreement is more complicated than the first, because the pronoun must also agree with its antecedent in person and gender. A pronoun in the second person cannot, for instance, replace a noun in the third, as here: *If a person wants to thrive in solo practice, you had better get used to long hours and unpredictable revenue*. Nor, as a growing consensus holds, can a pronoun of one gender replace a noun that includes both genders in its meaning. The illustrative sentence above becomes grammatically accurate but politically suspect when you replace *person* with only the masculine *he* or only the feminine *she*.

The writer of **Sentence 3** ran up against this problem and solved it in the least satisfactory way: *Once a moving party meets their burden, the burden shifts*. He wished to avoid the ponderousness of *Once a moving party meets a moving party's burden* and the ungainliness of replacing *moving party* with *his or her*. So he seized grammar by the throat, gave it a good throttle, and replaced a singular noun with the plural pronoun *their*.

Until English evolves a singular, third-person pronoun to do the job that *he* alone used to do, you will have to be resourceful if you wish to be grammatical. If using *his or her* displeases you, you must improvise. You might remove the possessive pronoun altogether: *Once the moving party meets the burden, the burden shifts*. Or you might shift from the singular to the plural: *Once moving parties meet their burden, the burden shifts*. In some contexts, you can use *we*, *you*, or *one* to reach the safe harbor of gender neutrality. In this essay, I have chosen to be evenhanded instead of neutral, using the masculine pronoun for writers of the odd-numbered sentences in the Grammar Quiz and the feminine pronoun for writers of the even-numbered ones. An ideal solution? No. A reasonable expedient? I think so.

Sentence 4 illustrates the forlorn circumstance of a pronoun without a noun to relate to: *Formal title to the property would remain with the wife, which may be unpalatable to the husband*. Does the relative pronoun *which* refer to *title*, *property*, or *wife*? The first possibility makes no sense, because a *title* isn't even metaphorically unpalatable. *Property* makes sense only if we imagine an unusually ugly house and a husband of exacting taste. Even in

the context of divorce proceedings, it's unlikely that *wife* is the intended referent. The writer almost certainly meant *which* to refer to the idea she expressed in the main clause. But a pronoun can't do that job, because it derives its meaning not from phrases and clauses, but from its one-to-one relationship with a noun. Since *title*, *property*, and *wife* are the only nouns preceding the pronoun, and none tells us what the husband may find unpalatable, the writer must rephrase to eliminate the meaningless *which*: *Formal title to the property would remain with the wife, an arrangement that the husband may find unpalatable. Or, Formal title to the property would remain with the wife. The husband may dislike this arrangement.*

Unlike Sentence 4's *which*, which has nothing to refer to, Sentence 5's *this* has more to refer to than it can reasonably handle. In the long subclause, the writer specifies a three-pronged test of a court's just dealing: *Whether due process was honored; whether the parties' rights to be heard and represented were fully exercised; whether the court's discretionary ruling was reasoned or arbitrary.* He meant the singular *this* in the main clause to refer to all three prongs – something that a singular pronoun cannot do: *This can be determined only on a case-by-case basis.*

There are good and better ways to solve this problem. The plural *These* would be clearer than the singular *This*, but not perfectly clear. Demonstrative pronouns (*this*, *that*, *these*, and *those*) require for clarity the demonstration that their name specifies. At the fish market, for instance, the proprietor knows what you mean when you say *I'll take six of those*, because you can point to the salmon fillets. The identical instruction over the telephone would certainly prompt a request for clarification. In writing as in telephoning, you are unable to point, so the demonstrative pronouns do you little good. Utility and clarity alike increase when you place a noun after every written use of *this*, *that*, *these*, and *those*. In Sentence 5, *These elements* would be clearer than *These* alone.

Pronouns cease to be troublesome when you remember what they are and use them to do the work they're suited to do. Pronouns take the place of nouns so that you never need to write a sentence like this one: *John lost John's case when John's star witness left town on the day John planned to place John's star witness on the stand.* As long as every pronoun you write has an unambiguous relationship with a noun – not a phrase, not a clause, not everything that precedes the pronoun – all will be well. You make that relationship evident when the pronoun and its related noun agree in person, number, and gender.

Problems of Modification (# 6–7)

When Western Union charged by the word, people who sent telegrams knew how to reduce a thought to its

essential elements – an implied subject, a verb, and a participial adjective (*Got married*) or an implied subject, a verb, and a direct object (*Send money*). In the era of e-mail, writers can afford to be more expansive in their messages – to indicate, at the very least, whom they married or how much money they need. Modification denotes this fleshing out of a sentence's bare bones – the use of words, phrases, and clauses to tell the reader more about the sentence's essential elements of subject, verb, and object.

Observe the Zen-like statement, *The good is reached*, grow through modification into one of Justice Holmes's most famous sentences. First, the noun *good* acquires two modifying adjectives:

The ultimate good desired is reached.

This clause then takes on a pair of prepositional phrases:

The ultimate good desired is reached by free trade in ideas.

Then the modifying clauses arrive to elbow the thought toward increasing clarity. First, a new clause absorbs and subordinates the existing clause:

Men may come to believe that the ultimate good desired is reached by free trade in ideas.

This new clause shoots forth a subclause:

... they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas.

When this modified main clause finally yields a pair of appositive subclauses, Holmes's thought is expressed:

[W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.²

Justice Holmes certainly did not build this sentence in the word-phrase-clause order I've suggested, but he needed all three kinds of modifiers as he wrestled with his thought and pinned it to the page. One of the pleasures of writing springs from these transformations of vague notions into precise ideas. Of all the exercises of judgment that inform the crafting of a fine sentence, few require more care than the writer's decisions about which elements of a sentence to modify, how to modify them, and how extensively to do so.

In legal prose, carelessness on this score shows up most often in misplaced and dangling modifiers. Sentence 6 of the Grammar Quiz represents the problem of a misplaced phrase: *Bradley's client said she understood the charges a few times during the conversation.* The

modifying phrase *a few times during the conversation* should tell us how often and in what circumstance the client *said*; in its current place in the sentence, it tells us instead about the client's intermittent comprehension of the charges. As soon as the writer moves the modifier closer to what it actually modifies, the sentence makes a different sense – in this case, one more flattering to Bradley's client: *A few times during the conversation, Bradley's client said she understood the charges.*

Sentence 7 contains a dangling modifier, a problem so common in legal prose that even skillful writers slip into it now and then: *To prove actual malice, the defendant must have known the statements were false or published them with reckless disregard despite knowing they were false.* Surely the last thing the writer expects the defendant to do is to prove his or her own actual malice. That task falls to the allegedly libeled *plaintiff*, who doesn't appear in the sentence except as the implied subject of the infinitive phrase. For the sentence to make sense, the implied subject and the stated subject of the main clause must correspond. The easiest solution is for the writer to alter the main clause by replacing *defendant* with *plaintiff*: *To prove actual malice, the plaintiff must show that the defendant knew the statements were false.*

Most legal writers need to keep in mind only two rules about the grammar of modification: (1) Give every modifier something it can reasonably modify, and (2) place modifying words, phrases, and clauses as close as possible to what they modify. Then you'll be able to express even your most intricate thoughts with Holmesian exuberance and not lose your reader along the way.

Coordination: Parallelism (# 8–10)

When grammatical elements in a sentence perform the same function, they should take the same form. Even without brushing up your Shakespeare, for instance, you know that Hamlet did not say, *To be, or stop being, that is the question.* That sentence just doesn't sound right. The conjunction *or* links a pair of alternatives, and you expect each alternative to match the other in form: *To be, or not to be.*

Many structures widely used in legal prose call for matches as exact as Hamlet's famous infinitives. You need parallel constructions when words, phrases, or clauses are (1) joined by *and* or *or*; (2) linked by the correlative conjunctions *either . . . or*, *neither . . . nor*, *both . . . and*, and *not only . . . but also*; and (3) presented as items in a series or a list. In **Sentence 8**, the writer missed the signal for matching structures that the correlative conjunctions *neither . . . nor* were sending her way: *Neither the report of Dr. Farragut nor Dr. Rider contains the requisite information.* Here, the problem is at once grammatical and semantic. After *neither* comes Dr. Farragut's report,

Answers to Grammar Quiz

1. Subject and verb disagree: Ordinary socializing and flirtation *fail* to satisfy the severity test of a valid sexual-harassment claim.

2. Subject and verb disagree: What type of damages *is* available for recovery against a builder under these circumstances?

3. Noun and pronoun disagree: Once a moving party meets *his or her* burden, the burden shifts.

4. Relative pronoun *which* lacks a clear antecedent: Formal title to the property would remain with the wife, an arrangement that may be unpalatable to the husband.

5. Demonstrative pronoun *this* lacks a clear antecedent: Whether due process was honored; whether the parties' rights to be heard and represented were fully exercised; whether the court's discretionary ruling was reasoned or arbitrary: *These elements* can be determined only on a case-by-case basis.

6. The modifying phrase is misplaced: *A few times during the conversation, Bradley's client said she understood the charges.*

7. The modifying infinitive phrase dangles: To prove actual malice, the *plaintiff* must show that the defendant knew the statements were false or published them with reckless disregard despite knowing they were false.

8. Parallel structures are lacking: The report of *neither Dr. Farragut nor Dr. Rider* contains the requisite information.

9. Parallel structures are lacking: In the case of the Loan, (1) *there is an express loan*, (2) *its terms are set forth in the Note*, and (3) *its interest rate exceeds the permissible rate of 20%.*

10. The terms of the comparison cannot be compared: *As in Sheffield, the adoptive parent in our case contracted orally, but not in writing, to raise his wife's child as his own.*

11. Bonus Question:

brillig: predicate adjective modifying expletive *it* (contracted in '*Twas*)

slithy: attributive adjective modifying *toves*
toves: noun; subject of the compound verb

did gyre and gimble: compound verb

wabe: noun; object of the preposition *in*

mimsy: predicate adjective modifying *borogoves*
borogoves: noun; subject of the verb *were*

mome: attributive adjective modifying *raths*

raths: noun; subject of the verb *outgrabe*

outgrabe: verb

but after *nor* comes Dr. Rider himself, apparently without the necessary goods. The writer can repair her grammar and clarify her meaning by making the *nor* phrase match the *neither* phrase, but the result is cumbersome: *Neither the report of Dr. Farragut nor the report of Dr. Rider contains the requisite information.* The match works better in reverse: *The report of neither Dr. Farragut nor Dr. Rider contains the requisite information.* Or, *Neither Dr. Farragut's nor Dr. Rider's report contains the requisite information.* To make the structures match, in other words, you sometimes have to experiment. But the experiment is always worthwhile and often revealing. Logically dissimilar elements, for instance, will resist your efforts to coordinate them – a reliable sign that you need to rethink what you're trying to say.

Sentence 9 presents a related problem of parallelism, this time in a staple of legal prose, a list. The writer uses his list to present facts about a loan, but the grammatical structure of the facts does not match: *In the case of the Loan, (1) there is an express loan, (2) the terms of which are set forth in the Note, (3) which interest rate exceeds the permissible rate of 20%.* Each item taken separately should cooperate with the opening prepositional phrase to state a fact about the loan. The independent clause of (1) does so, but the dependent clauses of (2) and (3) do not. What does it mean to write *In the case of the Loan, the terms of which are set forth in the Note* or *In the case of the Loan, which interest rate exceeds the permissible rate of 20%?* When the writer uses (1) as a template for (2) and (3), he solves the problem: *In the case of the Loan, (1) there is an express loan, (2) its terms are set forth in the Note, and (3) its interest rate exceeds the permissible rate of 20%.* The revised sentence has three independent clauses, each of which makes sense with the opening phrase.

A final problem of coordination appears in Sentence 10, where the writer tries to compare incomparable things – not just apples and oranges, but apples and chimpanzees. *Like Sheffield, the adoptive parent contracted orally, but not in writing, to raise his wife's child as his own.* But the adoptive parent is not at all like a legal case. To solve the problem, the writer has a choice. She can write, *Like the adoptive parent in Sheffield, the adoptive parent in the present case,* or she can do the job more efficiently: *As in Sheffield, the adoptive parent in this case . . .* Almost always traceable to haste, this particular error suggests a writer's willingness to embrace logical impossibility – an inclination that a client or a judge may find particularly alarming.

The Role of Grammar

These problems, whether of agreement, modification, or coordination, obscure the relationships between and among the words, phrases, and clauses on which the meaning of a sentence depends. As writers, we may conclude that an occasional obscurity – a dangling modifier here, or a pronoun without an antecedent there – will cause no lasting harm. As readers, though, we may not feel so sanguine. Sometimes we need all the grammar we can get.

Writers who bother to get the grammar right clarify their meanings and ease their readers' tasks. To this extent, grammar always matters.

The Bonus Question illustrates this circumstance. The opening stanza of Lewis Carroll's *Jabberwocky* contains words whose meanings we can only guess at, as Carroll fully intended. But that we *can* guess – that we can even begin to make sense of these words – depends on our knowledge of grammar. We

know, for instance, that *borogoves* is a noun because only nouns take the article *the* as a modifier. We know that it is a plural noun because it ends in *s* and takes the plural verb *were*. The clause *All mimsy were the borogoves* may call to my mind an image utterly unlike the one you see. But grammar lets us confidently agree that we're reading about certain things (*borogoves*) existing in a certain state of being (*mimsy*). Out of Carroll's delightful nonsense, in short, grammar goes a long way toward making sense.

Our job as writers is to turn our sense into someone else's. A writer does this job poorly whenever the reader stumbles over sloppily coordinated elements in a sentence or cannot easily discern which word functions as the subject of the verb; which noun a pronoun replaces; or which word another word, phrase, or clause modifies. Readers who encounter a few such errors may generously sort them out. Readers who encounter many may reach uncharitable conclusions about the writer's care, courtesy, or command of the language. Writers who bother to get the grammar right clarify their meanings and ease their readers' tasks. To this large extent, grammar always matters. It is the user's manual that no serious writer ever discards.

1. Lewis Carroll, *Jabberwocky*, in A Victorian Anthology, 1837–1895 (Edmund Clarence Stedman, ed., Cambridge, Mass.: Riverside Press, 1895); available at <www.bartleby.com/246/846.html>.
2. *Abrams v. United States*, 250 U.S. 616, 630 (1919).